

bunal” after “requirements that the”, in subpar. (B), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” before “shall determine” and for “Tribunal” wherever else appearing, and substituted “convene a copyright arbitration royalty panel” for “conduct a proceeding”, and in subpar. (C), substituted “Librarian of Congress” for “Copyright Royalty Tribunal”.

Subsec. (c). Pub. L. 103-198, §5(2)(A), substituted “Adjustment” for “Determination” in heading.

Subsec. (c)(2). Pub. L. 103-198, §5(2)(B), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” in subpars. (A) and (B).

Subsec. (c)(3)(A). Pub. L. 103-198, §5(2)(C)(i), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” and substituted last sentence for former last sentence which read as follows: “Such notice shall include the names and qualifications of potential arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select.”

Subsec. (c)(3)(B). Pub. L. 103-198, §5(2)(C)(ii), (iii), redesignated subpar. (D) as (B), substituted “copyright arbitration royalty panel appointed under chapter 8” for “Arbitration Panel” in introductory provisions, and struck out former subpar. (B) which provided for the selection of an Arbitration Panel.

Subsec. (c)(3)(C). Pub. L. 103-198, §5(2)(C)(ii), (v), redesignated subpar. (G) as (C), amended subpar. generally, substituting provisions relating to period during which decision of arbitration panel or order of Librarian of Congress becomes effective for provisions relating to period during which decision of Arbitration Panel or order of Copyright Royalty Tribunal became effective, and struck out former subpar. (C) which related to proceedings in arbitration.

Subsec. (c)(3)(D). Pub. L. 103-198, §5(2)(C)(vi), redesignated subpar. (H) as (D) and substituted “referred to in subparagraph (C)” for “adopted or ordered under subparagraph (F)”. Former subpar. (D) redesignated (B).

Subsec. (c)(3)(E) to (H). Pub. L. 103-198, §5(2)(C)(iv)-(vi)(I), struck out subpar. (E) which required the Arbitration Panel to report to the Copyright Royalty Tribunal not later than 60 days after publication of notice initiating an arbitration proceeding, struck out subpar. (F) which required action by the Tribunal within 60 days after receiving the report by the Panel, and redesignated subpars. (G) and (H) as (C) and (D), respectively.

Subsec. (c)(4). Pub. L. 103-198, §5(2)(D), struck out par. (4) which established procedures for judicial review of decisions of the Copyright Royalty Tribunal.

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Section 6 of Pub. L. 103-369 provided that:

“(a) IN GENERAL.—Except as provided in subsections (b) and (d), this Act [amending this section and section 111 of this title, enacting provisions set out as notes under this section and section 101 of this title, and repealing provisions set out as a note under this section] and the amendments made by this Act take effect on the date of the enactment of this Act [Oct. 18, 1994].

“(b) BURDEN OF PROOF PROVISIONS.—The provisions of section 119(a)(5)(D) of title 17, United States Code (as added by section 2(2) of this Act) relating to the burden of proof of satellite carriers, shall take effect on January 1, 1997, with respect to civil actions relating to the eligibility of subscribers who subscribed to service as an unserved household before the date of the enactment of this Act.

“(c) TRANSITIONAL SIGNAL INTENSITY MEASUREMENT PROCEDURES.—The provisions of section 119(a)(8) of title 17, United States Code (as added by section 2(5) of this Act), relating to transitional signal intensity measurements, shall cease to be effective on December 31, 1996.

“(d) LOCAL SERVICE AREA OF A PRIMARY TRANSMITTER.—The amendment made by section 3(b) [amending

section 111 of this title], relating to the definition of the local service area of a primary transmitter, shall take effect on July 1, 1994.”

EFFECTIVE DATE

Section 206 of title II of Pub. L. 100-667 provided that: “This title and the amendments made by this title [enacting this section and sections 612 and 613 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, amending sections 111, 501, 801, and 804 of this title and section 605 of Title 47, and enacting provisions set out as notes under this section and section 101 of this title] take effect on January 1, 1989, except that the authority of the Register of Copyrights to issue regulations pursuant to section 119(b)(1) of title 17, United States Code, as added by section 202 of this Act, takes effect on the date of the enactment of this Act [Nov. 16, 1988].”

Section 207 of title II of Pub. L. 100-667 provided that this title and the amendments made by this title (other than the amendments made by section 205 [amending section 605 of Title 47]) cease to be effective on Dec. 31, 1994, prior to repeal by Pub. L. 103-369, §4(b), Oct. 18, 1994, 108 Stat. 3481.

TERMINATION OF SECTION

Section 4(a) of Pub. L. 103-369 provided that: “Section 119 of title 17, United States Code, as amended by section 2 of this Act, ceases to be effective on December 31, 1999.”

APPLICABILITY OF 1994 AMENDMENT

Section 5 of Pub. L. 103-369 provided that: “The amendments made by this section apply only to section 119 of title 17, United States Code.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 111, 501, 511, 801, 802, 803 of this title; title 18 section 2319; title 47 sections 325, 548, 613.

§ 120. Scope of exclusive rights in architectural works

(a) PICTORIAL REPRESENTATIONS PERMITTED.—The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.

(b) ALTERATIONS TO AND DESTRUCTION OF BUILDINGS.—Notwithstanding the provisions of section 106(2), the owners of a building embodying an architectural work may, without the consent of the author or copyright owner of the architectural work, make or authorize the making of alterations to such building, and destroy or authorize the destruction of such building.

(Added Pub. L. 101-650, title VII, §704(a), Dec. 1, 1990, 104 Stat. 5133.)

EFFECTIVE DATE

Section applicable to any architectural work created on or after Dec. 1, 1990, and any architectural work, that, on Dec. 1, 1990, is unconstructed and embodied in unpublished plans or drawings, except that protection for such architectural work under this title terminates on Dec. 31, 2002, unless the work is constructed by that date, see section 706 of Pub. L. 101-650, set out as an Effective Date of 1990 Amendment note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title; title 18 section 2319.

CHAPTER 2—COPYRIGHT OWNERSHIP AND TRANSFER

Sec.	
201.	Ownership of copyright.
202.	Ownership of copyright as distinct from ownership of material object.
203.	Termination of transfers and licenses granted by the author.
204.	Execution of transfers of copyright ownership.
205.	Recordation of transfers and other documents.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 912 of this title.

§ 201. Ownership of copyright

(a) **INITIAL OWNERSHIP.**—Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are coowners of copyright in the work.

(b) **WORKS MADE FOR HIRE.**—In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

(c) **CONTRIBUTIONS TO COLLECTIVE WORKS.**—Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

(d) **TRANSFER OF OWNERSHIP.**—

(1) The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

(2) Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by section 106, may be transferred as provided by clause (1) and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this title.

(e) **INVOLUNTARY TRANSFER.**—When an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title, except as provided under title 11.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2568; Pub. L. 95-598, title III, § 313, Nov. 6, 1978, 92 Stat. 2676.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Initial Ownership. Two basic and well-established principles of copyright law are restated in section 201(a): that the source of copyright ownership is the author of the work, and that, in the case of a "joint work," the coauthors of the work are likewise coowners of the copyright. Under the definition of section 101, a work is "joint" if the authors collaborated with each other, or if each of the authors prepared his or her contribution with the knowledge and intention that it would be merged with the contributions of other authors as "inseparable or interdependent parts of a unitary whole." The touchstone here is the intention, at the time the writing is done, that the parts be absorbed or combined into an integrated unit, although the parts themselves may be either "inseparable" (as the case of a novel or painting) or "interdependent" (as in the case of a motion picture, opera, or the words and music of a song). The definition of "joint work" is to be contrasted with the definition of "collective work," also in section 101, in which the elements of merger and unity are lacking; there the key elements are assemblage or gathering of "separate and independent works * * * into a collective whole."

The definition of "joint works" has prompted some concern lest it be construed as converting the authors of previously written works, such as plays, novels, and music, into coauthors of a motion picture in which their work is incorporated. It is true that a motion picture would normally be a joint rather than a collective work with respect to those authors who actually work on the film, although their usual status as employees for hire would keep the question of coownership from coming up. On the other hand, although a novelist, playwright, or songwriter may write a work with the hope or expectation that it will be used in a motion picture, this is clearly a case of separate or independent authorship rather than one where the basic intention behind the writing of the work was for motion picture use. In this case, the motion picture is a derivative work within the definition of that term, and section 103 makes plain that copyright in a derivative work is independent of, and does not enlarge the scope of rights in, any preexisting material incorporated in it. There is thus no need to spell this conclusion out in the definition of "joint work."

There is also no need for a specific statutory provision concerning the rights and duties of the coowners of a work; court-made law on this point is left undisturbed. Under the bill, as under the present law, coowners of a copyright would be treated generally as tenants in common, with each coowner having an independent right to use or license the use of a work, subject to a duty of accounting to the other coowners for any profits.

Works Made for Hire. Section 201(b) of the bill adopts one of the basic principles of the present law: that in the case of works made for hire the employer is considered the author of the work, and is regarded as the initial owner of copyright unless there has been an agreement otherwise. The subsection also requires that any agreement under which the employee is to own rights be in writing and signed by the parties.

The work-made-for-hire provisions of this bill represent a carefully balanced compromise, and as such they do not incorporate the amendments proposed by screenwriters and composers for motion pictures. Their proposal was for the recognition of something similar to the "shop right" doctrine of patent law: with some exceptions, the employer would acquire the right to use the employee's work to the extent needed for purposes of his regular business, but the employee would retain all other rights as long as he or she refrained from the